

No. 24-13505

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

KARON WARREN, DEBORAH KAPLAN, KIMBERLY KAVIN, and JENNIFER SINGER,

Plaintiffs-Appellants,

v.

UNITED STATES DEPARTMENT OF LABOR; LORI CHAVEZ-DEREMER, U.S. Secretary of Labor; PATRICIA DAVIDSON, in her official capacity as Deputy Administrator of the U.S. Department of Labor's Wage and Hour Division; and U.S. DEPARTMENT OF LABOR, WAGE AND HOUR DIVISION,*

Defendants-Appellees.

MOTION TO HOLD APPEAL IN ABEYANCE

* Pursuant to Fed. R. App. Proc. 43(c)(2), U.S. Secretary of Labor Lori Chavez-DeRemer is automatically substituted for former Acting U.S. Secretary of Labor Julie Su and Deputy Administrator Patricia Davidson is automatically substituted for former Administrator Jessica Looman.

Certificate of Interested Persons and Corporate Disclosure Statement

Pursuant to Eleventh Circuit Rule 26.1-1 through 26.1-3, I hereby certify that the following persons, firms, and associations may have an interest in the outcome of this case:

American Trucking Associations, Amicus Curiae in Support of Plaintiff

Associated Builders and Contractors, Inc., Amicus Curiae in Support of Plaintiff

Associated Builders and Contractors of Southeast Texas, Inc., Amicus Curiae in Support of Plaintiff

Baskin, Maurice, Counsel for Amici Curiae Chamber of Commerce of the United States of America; Coalition for Workforce Innovation; Associated Builders and Contractors of Southeast Texas, Inc.; Associated Builders and Contractors, Inc.; Financial Services Institute, Inc.; National Federation of Independent Business, Inc.; National Retail Federation; and American Trucking Associations

Chamber of Commerce of the United States of America, Amicus Curiae in Support of Plaintiff

Chavez-DeRemer, Lori, U.S. Secretary of Labor

Coalition for Workforce Innovation, Amicus Curiae in Support of Plaintiff

Davidson, Patricia, in her official capacity as Deputy Administrator of the U.S. Department of Labor's Wage and Hour Division, Defendant/Appellee

Economic Policy Institute, Amicus Curiae in Support of Defendant

Farmworker Justice, Amicus Curiae in Support of Defendant

Financial Services Institute, Inc., Amicus Curiae in Support of Plaintiff

Freeman, Wilson C., Counsel for Plaintiffs/Appellants

Greenamyre, Zack, Counsel for Amici Curiae National Employment Law

Project and Public Citizen

Looman, Jessica, in her prior capacity as former Administrator of the U.S.

Department of Labor's Wage and Hour Division Defendant/Appellee

Kilberg, Andrew G.I., Counsel for Amici Curiae Chamber of Commerce of the

United States of America; Coalition for Workforce Innovation; Associated Builders

and Contractors of Southeast Texas, Inc.; Associated Builders and Contractors, Inc.;

Financial Services Institute, Inc.; National Federation of Independent Business, Inc.;

National Retail Federation; and American Trucking Associations

Maloney, Stephanie A., Counsel for Amici Curiae Chamber of Commerce of the United States of America; Coalition for Workforce Innovation; Associated

Builders and Contractors of Southeast Texas, Inc.; Associated Builders and

Contractors, Inc.; Financial Services Institute, Inc.; National Federation of

Independent Business, Inc.; National Retail Federation; and American Trucking

Associations

Mendro, Jason J., Counsel for Amici Curiae Chamber of Commerce of the United States of America; Coalition for Workforce Innovation; Associated Builders

and Contractors of Southeast Texas, Inc.; Associated Builders and Contractors, Inc.;

Financial Services Institute, Inc.; National Federation of Independent Business, Inc.;

National Retail Federation; and American Trucking Associations

National Employment Law Project, Amicus Curiae in Support of Defendant

National Federation of Independent Business, Inc., Amicus Curiae in Support

of Plaintiff

National Retail Federation, Amicus Curiae in Support of Plaintiff

Olson, Lisa A., Trial Counsel for Defendants

Public Citizen, Amicus Curiae in Support of Defendant

Public Justice Center, Amicus Curiae in Support of Defendant

Raab, Michael S., Counsel for Defendants/Appellees

REAL Women in Trucking, Amicus Curiae in Support of Defendant

Restaurant Opportunity Centers United, Amicus Curiae in Support of

Defendant

Romero, Samantha R., Counsel for Plaintiffs/Appellants

Samburg, Mark B., Counsel for Amici Curiae Public Justice Center,

Farmworker Justice, Restaurant Opportunity Centers United, REAL Women in

Trucking, Service Employees International Union, and Economic Policy Institute

Scalia, Eugene, Counsel for Amici Curiae Chamber of Commerce of the United

States of America; Coalition for Workforce Innovation; Associated Builders and

Contractors of Southeast Texas, Inc.; Associated Builders and Contractors, Inc.;

Financial Services Institute, Inc.; National Federation of Independent Business, Inc.;

National Retail Federation; and American Trucking Associations

Service Employees International Union, Amicus Curiae in Support of

Defendant

Singer, Jennifer, Plaintiff/Appellant

Su, Julie, former acting U.S. Secretary of Labor, Defendant/Appellee

Story, Richard W., Senior United States District Judge

United States Department of Labor, Defendant/Appellee

United States Department of Labor, Wage and Hour Division,

Defendant/Appellee

Utrecht, Jennifer, Counsel for Defendants/Appellees

Von Bokern, Jordan L., Counsel for Amici Curiae Chamber of Commerce of

the United States of America; Coalition for Workforce Innovation; Associated

Builders and Contractors of Southeast Texas, Inc.; Associated Builders and

Contractors, Inc.; Financial Services Institute, Inc.; National Federation of

Independent Business, Inc.; National Retail Federation; and American Trucking

Associations

Wake, Luke A., Counsel for Plaintiffs/Appellants

Warren, Karon, Plaintiff/Appellant

Webster, Leigh Ann, Counsel for Amici Curiae Public Justice Center,
Farmworker Justice, Restaurant Opportunity Centers United, REAL Women in
Trucking, Service Employees International Union, and Economic Policy Institute

Dated: April 4, 2025

/s/ Jennifer L. Utrecht
JENNIFER L. UTRECHT
Attorney for Defendants-Appellees

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KARON WARREN, DEBORAH KAPLAN,
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Defendants-Appellees.

MOTION TO HOLD APPEAL IN ABEYANCE

Defendants-appellees United States Department of Labor, *et al.*, respectfully move to hold this appeal in abeyance pending the agency's reconsideration of the rule challenged in this litigation. We have asked for plaintiffs-appellants' position on this motion but were unable to ascertain their position before filing this motion.

* Pursuant to Fed. R. App. Proc. 43(c)(2), U.S. Secretary of Labor Lori Chavez-DeRemer is automatically substituted for former Acting U.S. Secretary of Labor Julie Su and Deputy Administrator Patricia Davidson is automatically substituted for former Administrator Jessica Looman.

1. This appeal involves a challenge to a rule issued by the Department of Labor that provides interpretive guidance regarding how the Department would determine the classification of workers as employees or independent contractors under the Fair Labor Standards Act for the purposes of its own enforcement efforts. 89 Fed. Reg. 1638 (Jan. 10, 2024) (2024 Rule). Plaintiffs filed their opening brief on January 2, 2025.

2. Due to the recent change in administration on January 20, 2025, there is new Department of Labor leadership. This Court previously granted the government two 30-day extensions of time to file its response brief in order to permit new Department leadership sufficient time as they onboard to familiarize themselves with the issues in this case and determine how they wish to proceed here and in related litigation challenging the rule. Currently, the government's brief is due today, April 4, 2025. The government filed a motion for a third 30-day extension on March 24, 2025, requesting additional time for new agency officials to determine how they wish to proceed. That motion remains pending in this Court.

3. Yesterday, April 3, 2025, the Department informed undersigned counsel that it intends to reconsider the 2024 Rule at issue in this litigation, including whether to issue a notice of proposed rulemaking rescinding the regulation. Agency leadership will need additional time to engage in this decision-making process. Therefore, the government respectfully requests that this litigation be placed in abeyance pending the agency's reconsideration of the rule. This will serve the interests of judicial efficiency

because the agency's reconsideration and potential rescission of the rule may obviate the need for further litigation. The Department is prepared to provide periodic status updates as ordered by the Court.

4. As noted above, the government's motion for a 30-day extension of its response brief (currently due today) remains pending before this Court. The government respectfully requests that, even if this Court is not inclined to grant the full 30-day extension, it grant a short extension of the briefing deadline pending the Court's consideration of this motion for abeyance. That will conserve party and judicial resources and promote the efficient and orderly disposition of this appeal, including by ensuring that any further litigation is focused on an enduring agency action informed by the views of current agency leadership.

5. We have asked for plaintiffs-appellants' position on this motion. Because the government's response brief is currently due today, in the interest of time, we have filed this motion for an abeyance before we were able to ascertain their position.

CONCLUSION

For the foregoing reasons, the government respectfully requests that this case be held in abeyance pending further consideration by the Department of Labor. The government respectfully proposes to update the court with status reports at least every 60 days.

Respectfully submitted,

MICHAEL S. RAAB

/s/ Jennifer L. Utrecht

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APRIL 2025

CERTIFICATE OF COMPLIANCE

I certify that this motion complies with the word limit of Fed. R. App. P. 27(d)(2)(A) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), it contains 518 words.

/s/ Jennifer L. Utrecht
Jennifer L. Utrecht

CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2025, I electronically filed the foregoing motion with the Clerk of the Court by using the appellate CM/ECF system.

I certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system

/s/ Jennifer L. Utrecht
Jennifer L. Utrecht